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Exporting Ethics: Lessons From Russia's Attempt to Regulate Federal Lobbying

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The Russian Federation remains in troubled political and economic transition.[1] In the "spirit of the Marshall Plan," the United States has assisted its former Cold War foe to cope with the unpredictable course of change.[2] While providing technical advice, U.S. experts have influenced Russian legislation defining the legal relationship between the country's nascent business community and fledgling federal government.[3] This Note analyzes the attempt to export the U.S. model of business-government ethics through a Russian federal law regulating lobbying. The failure of that 1995 endeavor provides lessons for both Russian and U.S. policymakers.

The specter of corruption looms large in both Russia and the United States. In Russia, the trenchant bureaucracy, dishonest legislators, and organized crime threaten democratic and free-market reforms.[4] In the

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1. *The Makings of a Molotov Cocktail,* ECONOMIST, July 12, 1997, at S4.

2. Bill Clinton, *The Lessons of the Marshall Plan,* 63 VITAL SPEECHES 546-48 (1997). Unlike the Marshall Plan, under which President Harry Truman and a conservative U.S. Congress funded post-World War II reconstruction of European democracies, current fiscal constraints have meant that economic assistance to the Russian Federation has been more advisory than monetary. *See* John C. Roberts, *A Marshall Plan of Ideas,* CHRISTIAN SCIENCE MONITOR, April 13, 1990, at 19.

3. James H. Andrews, *Helping Law Come In From the Cold,* CHRISTIAN SCIENCE MONITOR, March 21, 1994, at 15; *see, e.g.* Andrei Baev, *The Transformation of the Role of the State in Monitoring Large Firms in Russia: From the State's Supervision to the State's Fiduciary Duties,* 8 TRANSNAT'L LAW. 247 (1995) (industrial privatization); Shoshanah V. Asnis, *Controlling the Russian Mafia: Russian Legal Confusion and U.S. Jurisdictional Power-Play,* 11 *Conn. J. Int'l L.* 299 (1996) (crime prevention); Laura A. Wakefield, *The Need for Comprehensive Legislation in the Russian Oil and Gas Industries,* 29 CASE W. RES. J. INT'L L. 149 (1997) (energy); William D. Meyer, *Facing the Post-Communist Reality: Lawyers in Private Practice in Central and Eastern Europe and the Republics of the Former Soviet Union,* 26 LAW & POL'Y INT'L BUS. 1019 (1995) (legal profession).

4. Scott P. Boylan, *Organized Crime and Corruption in Russia: Implications for U.S. and International Law,* 19 FORDHAM INT'L L.J. 1999, 1999-2002 (1996); Carol J. Williams, *Russia Ruffled by Revelry in Parliament,* L.A. TIMES, Sept. 11, 1996, at A1.

United States, the influence of foreign lobbyists, the size of corporate political contributions, and the prevalence of corrupt business practices abroad have raised concerns about improprieties in the business-government relationship.[5] Despite the popular perception of corruption at home, the United States has promoted domestic anticorruption laws as models for regulation abroad.

Lobbying reveals an ethical dilemma of democratic capitalism. On one hand, lobbying public officials is an outgrowth of the give-and-take between diverse factions.[6] On the other hand, lobbying exposes the conflict between the narrow economic goals of organized interests and the disinterested public good.[7] In the United States, ethical boundaries to legitimate corporate lobbying have developed in reaction to scandals and excesses of the times.[8] In Russia, the sudden transition to a market economy has dissolved ethical boundaries to the relationship between business interests and public officials.[9]

This Note explores the implications of exporting U.S. lobbying laws to the Russian Federation. Section I reviews the business-government relationship in the United States, legal limitations to lobbying public officials, alternative models of regulation, and international promotion of anticorruption laws. Section II describes the business-government relationship in Russia, current legal limitations on lobbying Russian officials, alternative models of regulation, and various approaches of exporting the U.S. model of regulation to the Russian Federation. Section III discusses a law proposed in the Russian legislature to regulate lobbying and assesses reasons for its failure. Section IV presents options for future courses of action and concludes that both Russians and Americans could benefit from an improved dialogue on the regulation of lobbying.

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5. Gil Troy, *Money and Politics: The Oldest Connection*, WILSON Q. 14, 30-32 (Summer 1997); *Inside the Belly of the Beast*, ECONOMIST, July 26, 1997, at 23.

6. *Lobbying*, 3 ENCYCLOPEDIA OF THE UNITED STATES CONGRESS, (Donald Bacon, Roger Davidson, Morton Keller, eds., 1994); THE FEDERALIST No. 10 (James Madison).

7. *Id.*

8. *See* Kathleen Clark, *Do We Have Enough Ethics in Government Yet?: An Answer From Fiduciary Theory*, 1996 U. ILL. L. REV. 57, 58-61 (1996).

9. Suzanne Possehl, *New Crime and Punishment*, 82 A.B.A.J. 72, 72 (1996)("In the giddy transition to a market economy, ethical boundaries have dissolved. . . . [Russians] must now learn business ethics and fair play.").

I. Lobbying in the United States

From the first meeting of the First Continental Congress in 1787, business interests have retained lobbyists to influence legislation.[10] Today, close to 14,000 professional lobbyists advocate the agendas of their employers to members of Congress and high ranking executive branch officials.[11] The largest group of lobbyists comes from the business community.[12] This section reviews the adversarial relationship between the public and private sectors in the United States, legal limitations to lobbying by business interests, alternatives for regulating lobbying, and the U.S. effort to reach across its borders to promote business-government ethics abroad.

A. The Business-Government Relationship

The roots of the modern business-government relationship in the United States trace back to the Gilded Age. Mark Twain memorialized this period at the turn of the twentieth century as characterized by expansion, corruption, ruthless speculators, and crooked politicians taking advantage of the uncertainty of massive economic change.[13] In an era of limited government, the business community grew in political and economic influence.[14] In response, government regulation of business activity expanded, first during the Progressive Era and later through the New Deal.[15] The business-government relationship became adversarial, framed as a continuing contest between public and private interests.[16]

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10. JEFFREY H. BIRNBAUM, THE LOBBYISTS: HOW INFLUENCE PEDDLERS WORK THEIR WAY IN WASHINGTON 8 (1992); *Lobbying*, *supra* note 6.

11. Peter H. Stone, *Lobbyists on a Leash?*, NAT'L J., Feb. 3, 1996, at 242. Unclear lobbying registration requirements have hindered attempts to estimate the actual number of practicing lobbyists: "estimates have ranged from a few thousand to almost 100,000." *Id.*

12. *Id.*

13. *See generally* MARK TWAIN, THE GILDED AGE: A TALE OF TODAY (Penguin 1985) (1873).

14. Thomas K. McCraw, *Business and Government: the Origins of the Adversary Relationship*, 26 CAL. MGMT. REV. 33, 33-50 (1984); Troy, *supra* note 5, at 21.

15. McCraw, *supra* note 14, at 33-50; Troy, *supra* note 5, at 21-26.

16. McCraw, *supra* note 14, at 33-50; Troy, *supra* note 5, at 23 ("Government and Big Business came to be seen as adversaries, and the corrupting effect of money in politics was . . . regarded not as aberration, but epidemic.").

By mid-century, professional lobbyism was firmly entrenched in Washington, D.C.[17] Congress worried that lobbyists, wielding misleading "propaganda," led corporate clients to believe that they exerted a "mysterious influence" on the legislative process.[18] Nonetheless, Congress recognized legitimate lobbyists as:

> entirely honest and respectable representatives of business, professional, and philanthropic organizations who come to Washington openly and frankly to express their views for or against legislation, many of whom serve a useful and perfectly legitimate purpose in expressing the views and interpretations of their employers with respect to legislation that concerns them.[19]

By the 1960s and 1970s, businesses joined labor and environmental groups in effectively organizing at the grassroots level, lobbied Congress through powerful trade associations, adopted detailed legislative agendas, and hired government affairs professionals to directly influence government action.[20] Improper contacts with lobbyists became part of the Watergate scandal, resulted in the reprimand and imprisonment of members of Congress, and prompted legislative reform.[21] Business interests persisted in playing a decisive role in policy debates during the 1980s and 1990s.[22] Today, corporate lobbyists have "so suffused" the federal legislative process "that at times they seem to be part of the government itself."[23]

Just as government responded to unbridled capitalism in the early part of this century, Congressional leaders have vowed to address the political power of business interests in the last decade of the century.[24]

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17. BIRNBAUM, *supra* note 10, at 12.

18. *See* United States v. Harriss, 347 U.S. 612, 621 n.10 (citing legislative history).

19. *Id.*

20. BIRNBAUM, *supra* note 10, at 16; DAVID VOGEL, FLUCTUATING FORTUNES: THE POLITICAL POWER OF BUSINESS IN AMERICA 194-213 (1989).

21. Birnbaum, *supra* note 10, at 16; Troy, *supra* note 5, at 27.

22. *Id.* at xi-xv (budget deficit); BOB WOODWARD, THE AGENDA 188-281 (1993) (health care); DAVID C. KORTEN, WHEN CORPORATIONS RULE THE WORLD 145 (1996) (trade).

23. BIRNBAUM, *supra* note 10, at 3.

24. *Investigation into Campaign Financing During the 1996 Elections: Hearing Before the Senate Committee on Governmental Affairs*, 105th Cong., 1st Sess. (July 8, 1997) (Statements of Senators Fred Thompson and John Glenn) *available in* 1997 WL 373861.

Although it would be a mistake to characterize the diverse and conflicting interests of the business community as either monolithic or ideologically one-sided, relations between the public and private sectors remain adversarial.[25] In the middle of this contentious relationship exists the lobbyist.

B. Limitations to Legitimate Lobbying

The first way in which American law has limited lobbying by business interests is through the criminal prohibition against bribery of public officials. Simply stated, a lobbyist may not corruptly offer anything of value with intent to influence an official act by a public official.[26] The Supreme Court emphasized in *Buckley v. Valeo* that bribery laws deal "with only the most blatant and specific attempts of those with money to influence governmental action."[27] In *McCormick v. United States*, the Court refused to find either bribery or extortion when a state legislator solicited and accepted cash from a lobbyist representing an organization which benefited from a bill supported by that legislator:[28]

> To hold otherwise would open to prosecution not only conduct that has long been thought to be well within the law but also conduct that in a very real sense is unavoidable as long as election campaigns are financed by private contributions or expenditures, as they have been from the beginning of the Nation.[29]

In other words, the democratic experience in the United States accepts that use of private funds to gain access to public decision-making does not, without corrupt intent, constitute bribery.[30]

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25. Mary Beth Regan, *Campaign Finance PACs Cross the Street*, BUS. WK., Apr. 10, 1995, at 10.

26. 18 U.S.C. § 201(b) (1994). Section 201 also addresses illegal gratuities. The difference between illegal gratuities and bribery is the absence of corrupt intent. 18 U.S.C. § 201(c); *see generally* Daniel Hays Lowenstein, Political Bribery and the Intermediate Theory of Politics, 32 U.C.L.A. L. REV. 784 (1985).

27. *See* Buckley v. Valeo, 424 U.S. 1, 28 (1976).

28. *See* McCormick v. United States, 500 U.S. 257 (1991) (reversing a conviction for extorting property under color of right in violation of the Hobbs Act, 18 U.S.C. § 1951).

29. *Id.* at 272.

30. "We do not think that the desire to gain access, by itself, amounts to an intent to improperly influence the legislators' exercise of official duties." *See* United States v. Sawyer, 85 F.3d 713, 731 (1st Cir. 1996). *Cf.* United States v. Carpenter, 961 F.2d 834,

A second way Congress has acted to curb the influence of business groups and their agents is through campaign finance reform. In 1976 Congress passed the Federal Election Campaign Act ("FECA"), which outlawed corporations and labor unions from making contributions or expenditures in connection with federal elections.[31] Instead, the act allowed the creation of political action committees which must register with and report to the Federal Election Commission ("FEC").[32] Finding that restrictions on political contributions and expenditures implicate First Amendment rights of free speech and association, the Supreme Court held in *Buckley* that campaign finance limits are subject to strict scrutiny.[33] The prevention of corruption or the appearance thereof became the only compelling government interest that could justify such limits.[34] Relying on a similar rationale, courts have struck down statutes outlawing all political contributions to legislators by lobbyists.[35] Today, business lobbyists routinely contribute to campaign coffers in order to

827 (9th Cir. 1992) ("We recognize, however, that granting or denying access [to lobbyists] based on contributions may occur in such a context that it sends a clear and unambiguous message that a legislator is conditioning his support for legislation on [the] levels of contributions. Under such circumstances, a jury could find that a legislator was conditioning his support for legislation on the receipt of contributions.")

31. 2 U.S.C. § 441b(a).

32. 2 U.S.C. §§ 432-34.

33. *See Buckley*, 424 U.S. at 44-45.

34. *Id.* at 26-29; Fed. Election Comm'n v. Nat'l Conservative Political Action Comm., 470 U.S. 480, 496-97 (1984). *See also* Note, *Parties, PACs, and Campaign Finance: Preserving First Amendment Parity*, 110 HARV. L. REV. 1573, 1574-1576 (1997).

35. *See* Fair Political Practices Comm'n v. Superior Ct., 25 Cal. 3d 33, 45 (1979). However, under an initiative effective on January 1, 1997, California law prohibits any elected officeholder from accepting campaign contributions made by lobbyists "if that lobbyist finances, engages, or is authorized to engage in lobbying the governmental agency for which the candidate is seeking election or the government agency of the officeholder." Cal. Gov. Code § 85704. At least thirteen states currently limit the timing of political contributions from lobbyists, usually through a prohibited period encompassing the legislative session. *See* Ariz. Rev. Stat. § 41-1234.01 (1974); Colo. R.S.A. § 1-45-117 (1974); Iowa Code § 56.15A (1975); Kan. Stat. Ann. § 46-265 (1974); La. Stat. § 24:53 (1972); Mass. G. L. § 55.18 (1975); Minn. Stat. 211B.15(2) (1988); Nev. Rev. Stat. § 218.942 (1975); N.M. Stat. Ann. § 2-11-8.1 (1978); N.C. Gen. Stat. 163-278.13A (1991); Or. Rev. Stat. § 260.725 (1993); Tenn. Code Ann. 3-6-106 (1995); Wis. Stat. 13.625 (1977). c.f. Ky. Rev. Stat. § 6.811(b) (1993) (legislative lobbyists may not make campaign contributions to legislators, candidates for the legislature or their campaign committees); M.D. State Gov't Art. § 15-707(d)(1) (1995) (no contributions in calendar year during which lobbyist lobbied).

gain access to public officials.[36] In other words, while the essence of the lobbyist's job is to convince, not contribute, many lobbyists perceive that they must pay to play an effective role in the policymaking process.

Congress has acted in a third way to reduce corruption in the business-government relationship. Ethics rules administered by the executive and legislative branch require government employees to disclose finances, restrict gifts and honoraria to members of Congress, and prohibit lobbying by senior officials of the executive branch for a period of five years.[37] In the last decade, the application of Congressional ethics rules toppled one Speaker of the House of Representatives and led to formal action by the Ethics Committee against another.[38] In terms of corporate lobbying, new conflict of interest laws slowed the "revolving door" phenomenon by spelling out the circumstances under which a former public official may become a paid lobbyist.[39] In summary, ethics rules have increasingly addressed corruption in the business-government relationship through preventative measures.

Finally, while campaign finance, bribery and ethics laws draw boundaries outside which legitimate lobbying may not operate, public disclosure laws expose corruption within these limits. Until January of 1996, the Federal Regulation of Lobbying Act of 1946 ("FRLA") and the Foreign Agents Registration Act of 1938 ("FARA") governed lobbying of members of Congress.[40] Finding these statutes ineffective and unclear, Congress enacted the Lobbying Disclosure Act of 1995 ("LDA") in order to increase awareness of paid lobbying and confidence in gov-

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36. Regan, *supra* note 25, at 10. The practice also holds true for the Executive Branch. William C. Rampel & Alan C. Miller, *First Lady's Aide Solicited Check to DNC, Donor Says*, L.A. TIMES, July 27, 1997, at A1.

37. Clark, *supra* note 8, at 65-66.

38. Mary McGrory, *The House's Civil Obedience*, WASH. POST, Jan. 26, 1997, at C1.

39. 18 U.S.C. § 207; Exec. Order No. 12,834, 58 Fed. Reg. 5911-16 (Jan. 20, 1993).

40. The FRLA covered direct communications by individuals and organizations whose principle purpose was to influence the passage or defeat of legislation by Congress. *See* United States v. Harriss, 347 U.S. 612, 623 (1954) (establishing the test for coverage under the FRLA). FARA required lobbyists representing foreign corporations to register with the Justice Department. *See* Viereck v. United States, 318 U.S. 236, 237-43 (1943) (narrowly interpreting disclosure requirements for lobbyists acting on behalf of foreign agents). *See generally* THOMAS M. SUSMAN, THE LOBBYING MANUAL 13-14 (1993) (describing limited extent of actual lobbying disclosure and paucity of indictments by the Department of Justice following the Harriss decision).

ernment integrity.[41] Under the LDA, businesses and their lobbyists which meet certain qualification thresholds must register and file semi-annual reports with the Secretary of the Senate and Clerk of the House.[42] The LDA requires disclosure of federal bodies contacted, issues lobbied upon, and a good faith estimate of total expenses incurred.[43] The LDA does not cover participation in public hearings or requests for information from federal officials delivered without attempting to influence their decisions.[44] Knowing violation of the LDA can result in civil and criminal penalties.[45] In short, the LDA was the latest in a long series of legislative attempts to shed light on legitimate lobbying in the executive and legislative branches.

C. Alternatives for Regulating Lobbying

Frustrated by First Amendment constraints on anticorruption laws, advocates of cleaner government have called for alternative approaches to regulating the business-government relationship. The narrow application of bribery laws is said to ignore "the historic American abhorrence for legislative decision-making based on the profit motive."[46] Dissenting judicial voices have urged a more equitable "balance between the access of the individual citizen and the access of the lobbyist to public representatives."[47] Candidates for national office have lampooned lobbyists

41. 2 U.S.C. § 1601 (finding "existing lobbying disclosure statutes have been ineffective because of unclear statutory language, weak administrative and enforcement provisions, and an absence of clear guidance as to who is required to register and what they are required to disclose[.] . . . [E]ffective public disclosure . . . will increase public confidence in the integrity of government).

42. A corporation must file federal lobbying reports if, within a six month period, an employee makes one or more lobbying contact, spends at least 20 percent of his or her time on lobbying, and the corporation expends more than $20,000 on lobbying. 2 U.S.C. §§ 1602(10), (14) and 1603(a)(3)(A)(ii).

43. 2 U.S.C. § 1604(c) (requiring semiannual reports and specifying content).

44. 2 U.S.C. § 1602(8). "Lobbying activities" include preparation, planning, research and other background work intended for use in lobbying contracts." 22 U.S.C. § 1602(7).

45. 2 U.S.C. § 1606 (civil penalty of up to $50,000 for failure to comply with the LDA); 18 U.S.C. § 1001 (maximum five-year prison sentence for perjury).

46. Joseph R. Weeks, *Bribes, Gratuities and the Congress: The Institutionalized Corruption of the Political Process, the Impotence of Criminal Law to Reach it and a Proposal for Change,* 13 J. LEGIS. 124, 131 (1986).

47. Fair Political Practices Comm'n, 25 Cal. 3d at 62 (Bird, C.J. dissenting).

wearing "alligator shoes" and "$1,000 tailor-made suits" who rewrite laws behind closed doors and "have money to spend" on behalf of special interest clients.[48] On one level, critics argue that the more "sunlight" cast on the activities of lobbyists, the better.[49] On another level, advocates of a more balanced view of the First Amendment have suggested that additional restrictions on business lobbying and contributions might level the economic playing field or purify the legislative process.[50] The First Amendment, these critics conclude, must be weighed against the state interest in deterring corruption.

In contrast, other commentators have argued that adding more anti-corruption laws could be counterproductive. New regulations on legislative and lobbying ethics invariably lead to new loopholes, unintended consequences, and more business for firms advising attorneys and advocates.[51] Assailing current regulations on legislative ethics as "a patchwork of ad hoc responses to political scandals," one academic has proposed the use of fiduciary principles to evaluate whether an official has violated the public trust.[52] Another observer, pointing to the social benefits of constituent service, has warned that new ethics restrictions "should be evaluated not only in terms of the corruption they would suppress, but also in terms of the legitimate activity they would incidentally

48. *Clinton's Presentation Likened to Perot Style* (CNN television broadcast, Feb. 16, 1993), *available in* LEXIS, Nexis Library, News & Analysis File.

49. Seth F. Kramer, *Sunshine, Secrets, and Scarlet Letters: The Tension Between Privacy and Disclosure in Constitutional Law,* 140 U. PA. L. REV. 1, 6-7 (1991) ("In general, scholarly analysis of the First Amendment disposes us toward the proposition that more information is better. We esteem 'sunlight' because it illuminates.") (quoting LOUIS D. BRANDEIS, OTHER PEOPLE'S MONEY AND HOW THE BANKERS USE IT 92 (1914)); DENNIS F. THOMPSON, POLITICAL ETHICS AND PUBLIC OFFICE 116-122 (1987) ("Whatever institutional devices we devise, they should provide not simply more information but more information of significance about the decisions legislators make and the conditions under which they make them.").

50. Francis Foster, *Information and the Problem of Democracy: The Russian Experience*, 44 AM. J. COMP. L. 243 (1996) (questioning whether free speech threatens democracy by deepening social tensions and leading to control by the wealthy and powerful); Ronald K.L. Collins and David M. Skover, NATION, July 21, 1997 at 12 (arguing for equality over laissez-fair values when applying the First Amendment).

51. Stone, *supra* note 11, at 242; Troy, *supra* note 5, at 32.

52. Clark, *supra* note 8, at 77-79.

prevent."[53] The concern from this perspective is that tighter ethics rules may hinder the free exchange of ideas.[54]

The Supreme Court has long participated in this debate. In *United States v. Harriss,* the Court upheld registration and reporting of lobbying activity against challenges that disclosure impinged on the freedom to associate and petition the government under the First Amendment.[55] Writing for the majority, Chief Justice Warren justified disclosure as a method by which Congress and voters could monitor powerful special interests:

> Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal.[56]

In his dissent, Justice Jackson countered that while lobbyists' "conflicting claims and propaganda are confusing, annoying and at times, no doubt, deceiving and corrupting" legislation should not risk encumbering "the greatest freedom of access to Congress, so that the people may press for their selfish interest, with Congress acting as arbiter of their demands and conflicts."[57] The Court later declared in *First National Bank of Boston v. Bellotti* that the "inherent worth of speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual."[58] In his dissent, Justice White argued that Congress could act to address the

53. Ronald M. Levin, *Congressional Ethics and Constituent Advocacy in an Age of Mistrust,* 95 MICH. L. REV. 1, 33 (1996).

54. Floyd Abrams, NATION, July 21, 1997 at 12-13 (criticizing proposals to limit speech of big business and wealthy individuals).

55. *See* Harriss, 347 U.S. at 625-626 (1954) (finding that Congress had a valid interest in determining the source of voices seeking to influence legislation and could require professional lobbyists to identify themselves and disclose lobbying activities).

56. *Id.* at 625.

57. *Id.* at 635.

58. First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 777 (1978) (invalidating state statute banning corporate contributions to a statewide initiative).

"deleterious influences" of political involvement by corporations and "those who exercise control over large aggregations of capital."[59] Alternative approaches to combating the deleterious influences of corruption in the U.S. business-government relationship must therefore preserve the right to petition public officials without curtailing the First Amendment rights of the corporate petitioner.[60]

D. Reaching Beyond U.S. Borders

The United States has reached across its borders to export domestic views of business ethics to other countries. In enacting the Foreign Corrupt Practices Act[61] ("FCPA"), U.S. lawmakers rejected the prevalence of bribery as a way of doing business in the international marketplace.[62] The FCPA "represented Congress' determination that competition in overseas markets should be based on the merits" and that, in the words of William Shakespeare, "corruption wins not more than honesty."[63] By regulating the behavior of business interests abroad, Congress made corruption into a multilateral issue.[64] By urging other countries to follow

59. *Id.* at 811 (White, J. dissenting) (quoting United States v. Automobile Workers, 352 U.S. 567, 585 (1957)).

60. Even disclosure requirements may fail under First Amendment scrutiny when they are so onerous as to unnecessarily curtail a lobbyist's right to petition. Fair Political Practices Comm'n, 25 Cal. 3d at 48 (striking down a requirement that lobbyists report transactions with businesses in which a lobbied legislator has a financial interest as overly burdensome). However, increasingly extensive disclosure of the lobbyist expenditures and activities of have been mandated by state legislatures and upheld by the courts. *See e.g.* Florida League of Prof'l Lobbyists, Inc. v. Meggs, 87 F.3d 457, 460 (11th Cir. 1996); Minnesota State Ethical Practices v. Nat'l Rifle Ass'n, 761 F.2d 509, 512 (8th Cir. 1985).

61. 15 U.S.C. §§ 78(m)(b), 78dd-1, 78dd-2, 78ff (1977), *amended by* Foreign Corrupt Practices Act Amendment of 1988, Pub. L. No. 100-418, §§ 5001-5003, 102 Stat. 1107, 1415-25 (1988).

62. Agnieszka Klich, *Bribery in Economics in Transition: The Foreign Corrupt Practices Act,* 32 STAN. J. INT'L L. 121, 122 (1996).

63. Daniel Pines, *Amending the Foreign Corrupt Practices Act to Include a Private Right of Action,* 82 CALIF. L. REV. 185, 187 (1994) (quoting a speech by Assistant Attorney General Philip Heymann, quoting WILLIAM SHAKESPEARE, KING HENRY THE EIGHTH act 3, sc. 2).

64. Klich, *supra* note 62, at 122.

the American example, the United States has supported a worldwide campaign to deter corrupt business practices.[65]

As a vehicle for exporting anticorruption laws, the FCPA illustrates the tension between the right to petition the government and the need to combat corruption. Congress created a two-pronged approach to FCPA enforcement by requiring disclosure and imposing prohibitions.[66] First, the act mandates detailed record keeping and reporting of funds expended overseas.[67] Second, the act forbids U.S. businesses and their agents from paying public officials to abuse their positions, with civil and criminal fines ranging from $10,000 to $2 million.[68]

Business interests have faulted the FCPA on several grounds, each of which resemble problems associated with domestic anticorruption statutes. First, the law addresses only the most blatant abuses and, given the difficulties inherent in transnational cases, the statute is rarely enforced.[69] Second, differing ethical norms and business practices in other countries complicate application of the elements of the offense.[70] Third, U.S corporations have complained that the FCPA imposes moral principles without regard to financial loss and the competitive disadvantage suffered by law abiding U.S. dealmakers.[71] In the context of Russia and other transitional economies, practitioners have faulted the FCPA as "filled with ambiguities in both law and commercial realities."[72]

Defenders of the FCPA have vigorously responded and promoted the law as an aspirational model for other countries. First, allowing a private right of action under the FCPA could breathe new life into the law.[73] Second, 1988 amendments to the FCPA allow for facilitating

65. G. Pascal Zachary, *Anticorruption Drive Starts to Show Results,* WALL ST. J., Jan. 27, 1997, at A1.

66. Pines, *supra* note 63, at 188.

67. 15 U.S.C. § 78m.

68. *Id.* at 191.

69. *Id.* at 192-195.

70. *Id.* at 197-198. For example, firms doing business in former state-run economies commonly rely on local agents who had once been employees of state agencies but who no longer fall under the definition of public officials. *Id.*

71. Pines, *supra* note 65, at 204-210.

72. Christopher F. Dugan & Vladimir Lechtman, *The FCPA in Russia and Other Former Communist Countries,* 91 AM. J. INT'L L. 378, 388 (1997).

73. Pines, *supra* note 63, at 216.

payments to expedite "routine government action"[74], as opposed to corrupt payments intended to induce public officials to misuse their positions to wrongfully direct business.[75] For example, an American company promoting goods or services in Russia probably does not violate the FCPA when it invites officials to visit facilities in the United States, as long as any payments were "reasonable and bona fide" expenses for promoting business or executing a contract.[76] Third, further fine-tuning of the definitions for "corrupt" and "official" action could help the law fit the reality of doing business in transitional economies.[77] Although unilateral anticorruption laws may disadvantage U.S. companies, reduction of the marginal costs of bribery has improved the business climate for all foreign investors.[78]

With this debate in the background, the United States has encouraged a worldwide anticorruption campaign. The Organization for Economic Co-operation and Development ("OECD"), recommended that members adopt criminal, civil, tax, banking and licensing regulations and cooperate-operate with non-member countries and international organizations to promote anticorruption policies.[79] Rules of Conduct issued by the International Chamber of Commerce called on governments to enact lobbyist disclosure and campaign finance laws.[80] In 1996, members of the Organization of American States ("OAS") signed an anticorruption agreement following the OECD example.[81] In 1997, the United States

74. 15 U.S.C. § 78dd-1(b) & 78dd-2(b).

75. Klich, *supra* note 62, at 124-125.

76. 15 U.S.C. 78dd-1(c)(2) & 78dd-2(c)(2); Dugan & Lechtman *supra* note 74, at 381.

77. Klich, *supra* note 62, at 122.

78. Stephanie Flanders, *Clear Thinking on Corruption,* FIN. TIMES, June 23, 1997, at 10.

79. Organization for Economic Co-operation and Development: Council Recommendation on Bribery in International Business Transactions, OECD Doc. SG/PRESS (94)36 (May 24, 1994), 33 I.L.M. 1389, 1391-1392 (1994). In 1996, the OECD issued a follow-up recommendation to repeal tax deductions for bribes to foreign officials. Organization for Economic Co-operation and Development: Council Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials, OECD Doc. C(96)27/FINAL (April 11, 1996), 35 I.L.M. 1311 (1996).

80. Extortion and Bribery in International Business Transactions: 1996 Revisions to the ICC Rules of Conduct, ICC Doc. (March 26, 1996), 35 I.L.M. 1307, 1308 (1996).

81. Inter-American Convention Against Corruption, (March 29, 1996), 35 I.L.M. 724, 727 (1996).

further advocated an OECD treaty on adopting laws modeled on the FPCA.[82] America's international activism coincided with an increased determination by governments to reduce the economic costs of the global "corruption eruption."[83] However, international agreements have had little practical impact on the business-government relationship in Russia.[84]

In summary, the FCPA serves as a useful case study in exporting anticorruption laws. The debate over the FCPA reflects the tension between the right to petition the government and the need to combat corruption. Reaching across national borders to promote this aspirational model created enforcement, interpretation, and practical difficulties. America's international activism encouraged countries to combat corruption, but had little practical impact on Russia. This section has examined several pieces of a regulatory puzzle that influence the U.S. business-government relationship, including campaign finance laws, bribery statutes, ethics rules, public disclosure requirements, and multinational agreements. The remainder of this Note explores how the United States has fared in exporting one piece of that puzzle, regulation of lobbying, to the Russian Federation.

II. Lobbying in Russia

Lobbying has taken hold in Russia. Inside the government, "presidential lobbyists" from the executive branch attempt to influence federal legislation and have become agents of stability and communication among competing factions.[85] Outside the government, "undisciplined lobbying" by the military-industrial complex, the agricultural sector and other business interests has increasingly shaped national legislation.[86] This section discusses the business-government relationship underlying this lobbying activity, the limits currently imposed on lobbying public

82. *Corruption: Kicking the Kickbacks,* ECONOMIST, May 31, 1997, at 61.

83. *Id.*

84. Dugan & Lechtman, *supra* note 72, at 379.

85. Thomas de Waal, *Taming the Wolf for Boris,* MOSCOW TIMES, Jan. 26, 1996, *available in* LEXIS, Nexis Library, News & Analysis File.

86. John P. Willerton & Aleksei A. Shulus, *Constructing a New Political Process: The Hegemonic Presidency and the Legislature,* 29 J. MARSHALL L. REV. 787, 816-17 (1995).

officials, alternative models of regulation, and the attempt to export U.S. business ethics to Russia.

A. The Business-Government Relationship

After a bloodless coup d'etat and during a period of rapid transition, Bolshevik revolutionaries outlawed most independent business activity in December of 1917.[87] Although the state permitted limited profit-making activity by private cooperatives before the fall of communism, capitalist enclaves contributed a minuscule percentage of official goods and services.[88] As a quasi-capitalist underground economy developed in the shadow of central planning, the business-government relationship occurred behind closed doors, with monetary tributes to public officials the price for conducting profitmaking activity.[89] The government responded with successive anticorruption campaigns, arresting and branding as criminal any private business activity.[90] The Department for the Struggle Against Theft of Socialist Property, known as the OBKSS, had authority to investigate and prosecute black market entrepreneurs, with punishment ranging from imprisonment to death.[91] Faced with increased vigilance in the drive to curb capitalism, businesses redoubled efforts to bribe OBKSS officials and reach creative profit-sharing agreements.[92] Government officials increasingly turned to underground activity to supplement their meager salaries.[93] By the late 1980s, toleration of the underground economy led to an "unholy alliance" between corrupt officials

87. BASIL DMYTRYSHYN, USSR: A CONCISE HISTORY 73-78 (4th ed. 1984).

88. Andrew T. Griffin & Larry D. Soderquist, *Private Companies in the Soviet Union,* 32 HARV. INT'L L.J. 201, 223 (1991).

89. Wolfgang Leonhard, THE KREMLIN AND THE WEST: A REALISTIC APPROACH 64-70 (1986) (describing the *prinoshenie,* or the portion of profits paid as bribes by businesspeople).

90. *Id.* at 159-61 (arguing that anticorruption campaigns by Khrushchev in 1964, Andropov in 1983 and Gorbachev in 1984 showed that "Soviet authorities, with all their power, [were] incapable of coping with the second economy and corruption in official places.").

91. *Id.* at 68.

92. *Id.*

93. *Id.* at 69.

and organized crime, a development that contributed to the strength of the powerful Russian "mafiya."[94]

The most significant economic development in post-communist Russia has been industrial privatization. During the waning years of Michael Gorbachev's leadership from 1985 to 1991, a newly independent legislature liberalized state controls and made private ownership possible through a reform-inspired "war of legislation."[95] Early attempts to transfer public property to private ownership resulted in what has been termed "nomenklatura privatization," a process through which bureaucrats "used their influence to reincorporate enterprises as private entities with themselves as major shareholders."[96] The business-government relationship moved above ground, but retained its corrupt ways.

On June 21, 1991, Boris N. Yeltsin was elected president of the Russian Federation in the first democratic election in Russia's history.[97] Following a failed hard-liner coup in August of 1991, reformers led by Anatoly B. Chubias devised an ambitious voucher scheme to incorporate Russian citizens into the privatization process.[98] Yeltsin seized on the voucher plan as the country plunged into precipitous economic decline.[99] Reformers hoped that by legitimizing and expanding private activity, the government could curtail growing mafiya violence and corruption.[100] In part because the program was haphazardly implemented by decree, industrial privatization faced opposition by a parliament dominated by former communist trade unions and industrial elites.[101]

Analysts likened business conditions to the Gilded Age in the United States, "characterized by monopolies, corruption, and endless

94. Daniel McGrory, *Civilizing the Russian Underground Economy: Requirements and Prospects for Establishing a Civil Economy in Russia,* 5 TRANSNAT'L L. & CONTEMP. PROBS. 65, 74 (1995).

95. Kent F. Moors, *The Failure of Russian Privatization 1992-1994: How the Industrial Nomenklatura Prevented Genuine Reform,* 3 J. INT'L LEGAL STUD. 1, 4-5 (1997).

96. Anthony V. Raftopol, *Russian Roulette: A Theoretical Analysis of Voucher Privatization in Russia,* 11 B.U. INT'L L.J. 435, 450-51 (1993).

97. David Remnick, *Yeltsin Elected President of Russia,* WASH. POST, June 14, 1991 at A1.

98. Raftopol, *supra* note 96, at 443.

99. *Id.* at 442-443.

100. *Id.*

101. *Id.* at 486-488.

loopholes" for those with power and influence.[102] Privatization faced uncertain prospects due to the imminent bankruptcy of industries, the lack of investment capital, a resistant bureaucracy, lagging technology, inconsistent and overlapping business regulations and the absence of a legal infrastructure.[103] Booming trade opportunities existed side-by-side with freewheeling disregard for the law.[104]

The country achieved a semblance of stability after voters narrowly approved the "Yeltsin Constitution" by national plebiscite in December of 1993.[105] Economically, the constitution guaranteed free enterprise and private ownership,[106] although prospects for the enforcement of these rights remained in doubt.[107] Politically, the power to create a legal infrastructure migrated from the legislature to a "hegemonic" executive branch,[108] although the success of communists and nationalists in the 1993 and 1994 elections insured that the presidential priority of privatization would proceed at a cautious pace.[109] To appease the old guard in the legislature and insure reelection in 1996, Yeltsin replaced reformers like Chubias with veterans of the nomankatura.[110]

Under the Yeltsin Constitution, the new Federal Assembly consists of two houses.[111] The State Duma has 450 deputies, half elected from districts and half elected according to political party.[112] Duma Deputies, assigned to committees in proportion to party representation, confirm top

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102. *Id.* at 489-90 (citing Dorlinda Elliot & Natasha Lebedeva, *A New Elite Fiddles as the Economy Burns,* NEWSWEEK, Feb. 22, 1993, at 40).

103. *Id.* at 478-479; Investment Climate in Russia, RUXPUB, Sept. 30, 1996, *available in* 1996 WL 8618978.

104. Patricia Kranz, *Welcome to Russia's Wild, Wild East,* BUS. WK., June 27, 1994, *available in* LEXIS, Nexis Library, News File.

105. John Lloyd, *Russian Elections: Voters Hand Great Power to President,* FIN. TIMES, Dec. 13, 1993, at 8.

106. KONST. RF. art. 8 (1993).

107. Christopher T. Ruder, Comment, *Individual Economic Rights Under the New Russian Constitution: A Practical Framework for Competitive Capitalism of Mere Theoretical Exercise?,* 39 ST. LOUIS L. J. 1429, 1437-48 (1995).

108. Willerton & Shulus, *supra* note 86, at 803-805.

109. *Id.* at 789-90.

110. Moors, *supra* note 95, at 51.

111. Willerton & Shulus, *supra* note 86, at 812-13. *See also* for a general overview of the current balance of powers, *Government* (last modified June 30, 1997) <http://www.russiatoday.com/rtoday/govern/govern.html>.

112. Willerton & Shulus, *supra* note 86 at 803-05.

executive officials and consider domestic legislation, budgetary issues and international treaties.[113] Legislation may originate through the committee process or directly by the executive branch.[114] The Federation Council has representatives from eighty-nine regions and typically considers only broad federal issues such as use of the military and elections.[115] The Federation Council has 14 days to act on legislation which has passed the Duma, otherwise the bill is automatically forwarded to the president for a veto decision, which can be overridden by a two-thirds majority vote in both houses.[116]

In retrospect, the early stages of Russian privatization appear to have created a business-government relationship dominated by the old guard.[117] Yeltsin's opposition in the Duma adjusted to privatization, under which they could "secure privileges, property and profitable monopolies for their allies in the bureaucracy and the business elite."[118] Business interests united diverse factions by promising economic stability.[119] Accordingly, the legislature reluctantly adopted laws necessary for private enterprise.[120]

In July of 1993, Duma legislation permitted the creation and registration of Chambers of Commerce and Industry ("CCIs") to coordinate activities among private enterprises, carry out independent analysis of economic legislation, represent the legal interests of members in state bodies, and cooperate with foreign enterprises.[121] Registered CCIs belonged to a Russian Federation CCI, which issued permits to domestic and foreign chambers of commerce and had the power to initiate legislation in the Duma.[122] In April of 1995, the Duma adopted a law providing

113. *Id.* at 812-813.

114. *Id.* (noting that in the 1994-95 session, for example, two-thirds of the bills considered by the Duma were introduced by deputies).

115. *Id.* at 811.

116. *Id.*

117. Moors, *supra* note 95, at 1-3.

118. Willerton & Shulus, *supra* note 86, at 811.

119. Geoff Winestock, *Desire for Stability Transcends Party Lines,* MOSCOW TIMES, Nov. 14, 1995, *available in* LEXIS, News Library, News & Analysis File.

120. Steve Liesman, *Looking Back: Some Russian Officials Are Moving to Reverse Business Privatization,* WALL ST. J., March 20, 1996, at A1.

121. RF Fed. Act No. 5340-1 (July 7, 1993), art. 3.

122. *Id.* at art. 15, 16.

a modern legal framework for recognition of public associations.[123] The most important step toward normalization of business activity was approval of part one of the Civil Code, which became effective on January 1, 1995 and replaced inadequate market-oriented laws enacted in the period immediately following the collapse of the Soviet Union.[124] The Civil Code, which narrowly passed the Duma, legalized entrepreneurial activities and allowed for the creation of entities to engage in private business.[125]

Concurrent with privatization, organized business interests made forays into the political arena. Foremost among business associations were the Russian Union of Manufacturers and Entrepreneurs, the Roundtable for Russian Business and Entrepreneurs for a New Russia.[126] Our Home in Russia, a business-backed political party, premiered in the 1995 Duma elections.[127] Behind the scenes business associations successfully mimicked their American counterparts, not only by their names and membership[128] but by disseminating sophisticated analysis and information through informal lobbyist structures.[129]

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123. RF Fed. Act No. 82-FZ (April 14, 1995). Article 27 allows a public associations to freely disseminate information, take part in formulating government decisions, hold meetings. engage in grassroots lobbying, participate in elections, and make proposals to federal bodies. *Id.*

124. Kenneth A. Cutshaw, *Russian Roulette,* 43 FED. LAW. 30, 32 (1995).

125. *Id.;* McGrory, *supra* note 94, at 97 fn. 82.

126. *Russian Politics* (visited Aug. 5, 1997) <http://www.russia.net/politics/russian_parties review.html>.

127. *Russian Federation Politics,* INT'L COUNTRY RISK GUIDE EUR., Feb. 1, 1996, *available in* 1996 WL 10211543.

128. For instance, the Round Table of Russian Business, although not formally associated with the Business Roundtable in America, shares a similar scope of membership. There are 70 collective members in the Roundtable of Russian Business, including the association of Russian Banks, association of Privatized and Private Enterprises, the League of Women-Managers and Entrepreneurs, the League of Christian Entrepreneurs and others. *Russian Politics* (visited Aug. 5, 1997) <http://www.russia.net/politics/russian_parties_review.html>.

129. *Id.;* For example, after the death of a foreign businessman due to mafiya violence, the Business Roundtable pledged to organize a "powerful lobby" in support of a bill expanding the powers of security agencies. *Press Conference with the Russian Business Roundtable Association Leadership on Tragic Death of Ivan Kivelidi* (Official Kremlin Int'l News Broadcast, Aug. 8, 1995) *available in* LEXIS, Nexis Library, News File.

Lobbyism gradually entered the legislative lexicon. As early as 1993, reformist deputies asserted that professional lobbyism was "a hallmark of development of a democratic society" and advocated regulation of legislative lobbying based on the "American pattern."[130] During the early stages of privatization:

> There [were] no civilized ways of interacting with the authorities. So, not only Mafia structures but also honest entrepreneurs turn lobbyists. Otherwise, with the continuing state monopoly reigning in the sphere of production they [were] doomed to an early demise and, at best, an eternal struggle for survival.[131]

As one Russian official said in 1994, "the word lobbyism has yet to win recognition [among legislators] who, although familiar with and having no objection to the practice as such, feel the term has undesirable connotations."[132] In 1995, the U.S. Chamber of Commerce in Russia noted that the "turmoil of the transition period in Russia has attracted many unsavory characters who encourage unethical business practices" and recommended legislation to ensure that corruption not "become an accepted part of the business situation" in Russia.[133]

The attempt to regulate business ethics through a 1995 law regulating lobbying took place against this unique backdrop. Similar to the United States, the business-government relationship in Russia remained adversarial. However, while the U.S. government acted over the course of this century to reign in unbridled capitalism, the Duma reversed nearly a century of Russian history to release it. As one observer has noted, "Russia is attempting to do in a brief time what industrial democracies

130. Tatyana Skorobogatko, *Business and Power: Dialogue Without an Outcome,* MOSCOW TIMES, June 4, 1993 *available in* LEXIS, Nexis Library, News File. Irina Hakamada, General Secretary of the Party of Economic Freedom, promoted a law drafted by Russia's Institute of the USA and Canada "targeted at tightening control over official lobbyist organizations." *Id.* The law, which would have regulated lobbying of the executive branch and outlawed executive lobbying, was the first lobbying regulation considered in the Duma. *Id.*

131. *Id.*

132. Anna Ostapchuk, *The Presidential Lobbyists are Ready to Act,* RUSSIAN PRESS DIG., Aug. 2, 1994, *available in* 1994 WL 9141705 (interview with President Boris Yeltsin's first chief of an executive agency formed for interaction with legislators).

133. Natasha Mileusnic, *Corruption Cited as Key Obstacle to Investment,* MOSCOW TIMES, June 27, 1995 *available in* LEXIS, Nexis Library, News File. The recommendation came from the executive director of the U.S Chamber of Commerce in Russia. *Id.*

took centuries to accomplish, i.e. construct systems of public order that maintain a continuously re-adjusting balance between private enterprise and the market, legal institutions, and social values."[134]

B. Limitations to Legitimate Lobbying

If the Civil Code provided the necessary foundation for business development, the Criminal Code provided a starting point for combating corruption in government. Previous attempts at prosecuting officials for embezzlement and bribery under treason and banditry laws proved largely ineffectual.[135] Decrees issued by President Yeltsin expanded prosecutorial powers but dealt mainly with organized crime and lower level civil servants.[136] The new Criminal Code, effective January 1, 1997, monitored the interaction of government officials and business representatives with the following provisions:

- Article 40 compelled officials to freely give to citizens any information that directly concerns their individual rights or freedoms;
- Article 169 prohibited officials from hindering lawful entrepreneurial activities;
- Article 204 made bribery among or by businesspeople punishable by fines;
- Article 304 punished the provocation of bribery, or the attempt to bribe an official for the purpose of blackmail.[137]

Russian officials acknowledged that it would take years to disseminate the Criminal Code, reevaluate pending cases and educate bureaucrats,

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134. McGrory, *supra* note 94, at 87.

135. Alexander Larin, *The Procurator-General is Forfeiting Public Trust,* MOSCOW NEWS WKLY., Aug. 25, 1993, *available in* 1993 WL 10473126.

136. McGrory, *supra* note 94, at 90 (describing the 1994 Decree on Combating Organized Crime and Banditism in the Russian Federation); Klich, *supra* note 62, at 132-133 (describing the 1992 Decree on Corruption, which forbids civil servants from exploiting their office to engage in entrepreneurial activity).

137. Alexander Osokin & Natalia Khroshavina, *New Criminal Code Deals With Economic Crimes,* 37 BUS. INTELLIGENCE BULL., Sept. 19, 1996, *available in* 1996 WL 8405766 (interview with member of Duma's Committee for Legislation and Legal Reform).

police and prosecutors.[138] Moreover, the criminal code did not directly address corruption, thus freely permitted the lending of money among businesspeople and public officials absent a showing of bribery.[139] As in the American context, criminal bribery laws dealt with only the most blatant and specific attempts of those with money to influence governmental action.[140]

Legislators, foreseeing that money may find avenues other than outright bribery to corrupt officials, also created a Central Electoral Commission to track political contributions.[141] Russian election statutes allowed private contributions to augment public subsidies, limited contributions and expenditures, and required public disclosure.[142] In the Duma elections of December 1995, donations from private interests to campaign funds were limited to just over 87 million rubles per donor.[143] In the presidential elections of 1996, wealthy business leaders that prospered under economic reforms made sizable contributions to support Yeltsin's reelection.[144] As in the United States, those exercising control over large aggregations of capital continued to influence the political process.

Because the Duma had not yet passed an Administrative Code, bureaucrats and officials were relatively unconstrained by procedural requirements, standards and safeguards.[145] However, the Yeltsin administration issued decrees in early 1997 that opened the government procurement process to regulatory scrutiny, addressed official corruption in the banking system, and required government officials and members

138. Possehl, *supra* note 9, at 74.

139. Yuri Nikitinsky, *Prosecutor General: Political Will Needed for War on Corruption,* MOSCOW NEWS, Dec. 19, 1996, *available in* LEXIS, Nexis Library, News File (interview with Prosecutor General of the Russian Federation).

140. *See, supra* notes 27-30.

141. *The Law of The Election of President of the Russian* <http://www.russiatoday.com/
rtoday/special/elect/eleclaw3.html>.

142. *Id.* at arts. 44-46.

143. *Russian Federation Politics,* INT'L COUNTRY RISK GUIDE EUR., Feb. 1, 1996, *available in* 1996 WL 10211543.

144. *The Makings of a Molotov Cocktail, supra* note 1, at S4.

145. McGrory, *supra* note 94, at 87-88.

of the legislature to disclose their income and bank accounts.[146] As in the United States, these new ethics rules addressed corruption principally through preventative measures.

Criminal, campaign finance, and ethics laws have drawn loose boundaries around legitimate lobbying of federal bodies. Bribery can result in criminal prosecution, candidates report contributions to the Central Electoral Commission, and public officials and legislators disclose their total worth. However, in the absence of registration and public disclosure requirements for lobbyists, lobbying from inside and outside the government takes place largely in the dark.

Lobbyists inside the government are under the control of the Presidential Department of Interaction with Deputies to the Federal Assembly, an executive agency which promotes friendly relations between the executive branch and legislature.[147] The agency began operating with the first session of the State Duma in 1994.[148] As Andrei Loginov, the first chief of the subdivision responsible for interaction with Duma deputies, observed: "In a Presidential republic, the head of the state not only takes part in shaping the Government's course, but also in getting it approved by the Parliament."[149] Recognizing the importance of informal contacts, presidential lobbyists attend plenary sessions, faction meetings, committee hearings, and mix with deputies in the corridors.[150] Loginov emphasized ethical behavior by these intra-governmental lobbyists:

> In communicating with the deputies, we are, of course, aware of their needs and problems, including the housing ones, but we never try to capitalize on this. There is a strict ethical code in civilized lobbying, and we are obliged to abide by it. For our behavior naturally reflects on the President's image. Therefore, we never use excessive pressure. Faced with resistance, we do not look for sophisticated bypasses. On the contrary, we try, which is more difficult, to think up some agreement procedure.[151]

146. *Press Briefing with Boris Nemstov,* (Official Kremlin Int'l News Broadcast, June 4, 1997) *available in* LEXIS, Nexis Library, News File.

147. Ostapchuk, *supra* note 132.

148. Willerton and Shulus, *supra* note 86, at 812.

149. Ostapchuk, *supra* note 132.

150. *Id.*

151. *Id.*

The give-and-take process of direct legislative negotiation described by Loginov would be familiar to American-style lobbyists. The crucial difference, of course, is that these lobbyists are employed by the government. Presidential lobbyists coordinate with interests outside the government, but only when they coincide with presidential priorities.[152]

Lobbyists from outside the government operate without formal oversight. Like presidential lobbyists, undisciplined lobbying by special interests relies on the informal arrangements and negotiations that characterize the post-Soviet political system.[153] Complicating the task of lobbyists from outside the government, and the analysis of their activity, is the blurred line between the underground economy, still dominated by an alliance of organized crime and complicit bureaucrats, and the official economy.[154] The result is an unhappy connection in the public mind of business, criminal and political activity.[155]

Representatives of powerful economic sectors have influenced the content and implementation of legislation.[156] Agriculture sector lobbyists reportedly work through the Communist Party, or KPRF, and Agrarian Party.[157] In many cases, privatization handed ownership of massive government-owned enterprises to their former communist managers, who now support the KPRF.[158] The energy sector strongly supports the political activities of Prime Minister Viktor S. Chernomyrdin, a former director of the centralized gas industry Gazprom.[159] Oil and metal producing companies operate under the control of banks with close, and

152. *Id.* ("Our work is assessed by one criterion only—the passage or non-passage of bills submitted by the President.")

153. Willerton and Shulus, *supra* note 86, at 816.

154. McGrory, *supra* note 24, at 68-69.

155. *The Makings of a Molotov Cocktail, supra* note 1, at S4.

156. Willerton and Shulus, *supra* note 86, at 816.

157. *Id.* at 817; President Yeltsin recently recognized the power of Russia's bloated, beleaguered farm lobby in cabinet reshuffling. Timothy Heritage, *Yeltsin Backs Government Reforms,* Reuters, May 19, 1997, *available in* LEXIS, Nexis Library, News File.

158. *Chernomyrdin Government Has Mixed Record* (last modified Mar. 5, 1997) <http://www.russiatoday.com/rtoday/news/03.html>.

159. Moors, *supra* note 95, at 52 n.46. While Chernomyrdin claims to earn only $700 a month and not to own stock in Gazprom, Russian newspapers reported that he has amassed $5 billion from his connections with the monopoly while in office. Carol J. Williams, *Russians in Tizzy Over Wealth of Prime Minister,* L.A. TIMES, April 11, 1997, at A1. Responding to the scandal, both reformers and communists in the Duma called for public disclosure of personal wealth. *Id.*

allegedly corrupt, links to the government.[160] By one account, business interests can subsidize staff expenses for Duma deputies by paying a surcharge to party factions.[161]

President Yeltsin recognized in his first state of the nation address since his re-election in 1996 that "the power of entrenched lobbies" was the main danger of his second term.[162] As one observer has concluded, "until these lobbying activities are brought into the open and regulated, they will continue to constitute an important and unpredictable dimension of the Russian decision-making process."[163]

Included among undisciplined lobbyists are representatives of foreign business interests. The American Chamber of Commerce in Russia and the U.S.-Russia Business Council, like their counterparts in the United States, offer members services and information on legislation.[164] Even hard-line communists appear before foreign business audiences in order to encourage investment.[165] Major American corporations typically require their employees to follow codes of conduct applying principles of "universal ethical applicability."[166] Enterprises with foreign investments must register with the Ministry of Economy.[167] At the present time, however, self-regulation is the only real restraint on lobbying activity by foreign business interests in Russia.

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160. *Chernomyrdin Government Has Mixed Record* (last modified Mar. 5, 1997) <http://www.russiatoday.com/rtoday/news/03.html>.

161. Jonas Bernstein, *Reform Follows Function: Ministerial Intrigue and Unbridled Corruption Come First,* AM. SPECTATOR, May 1997, at 63.

162. Mark Whitehouse, *Battle Joined: President v. The Lobbies,* MOSCOW TIMES, March 7, 1997, *available in* LEXIS, Nexis Library, News & Analysis File.

163. Willerton and Shulus, *supra* note 86, at 817.

164. *Russian Federation Politics, supra* note 127; *See, e.g., AmCham Publications* (visited Aug. 5, 1997) <http://www.amcham.ru>.

165. Anne McElvoy, *The Unmaking of the President,* TIMES (London), Mar. 11, 1995, *available in* LEXIS, Nexis Library, News File.

166. Klich, *supra* note 62, at 142-143. Some American firms have joined nongovernmental organizations to advocate that governments require ethics codes as a condition of doing business. *Id.* at 144.

167. The Ministry of Finance requires incorporation documents and proof of the legal status of investors but not information about lobbying activities. *See State Registration of Enterprises with Foreign Investment and Their Affiliates* (visited Aug. 5, 1997) <http://www.fipc.ru/fipc/qa.tp8.html>.

C. *Alternatives for Regulating Lobbying*

Duma deputies have more room to legislate under the Yeltsin Constitution than their American counterparts under the U.S. Constitution. Article 29 guarantees freedom of speech and disallows propaganda or campaigning that instigates social, racial, national or religious hatred and enmity.[168] Article 30 guarantees freedom of association.[169] Article 32 grants the right to take part in the administration of the state's affairs both directly and through representatives.[170] Under Articles 55 and 56, the Duma has authority to enact federal laws restricting these civil liberties to protect the constitutional system[171] or in a state of emergency.[172] As one observer has surmised, "the Russian constitution envisions drawing a balance between free speech and other competing values."[173] Through their proposals to combat corruption in the business-government relationship, conservative and reform deputies have drawn a different balance between these competing values.[174]

The U.S. and Russian constitutions start from different assumptions. Under the U.S. Constitution, what is not enumerated as a power of government is reserved to the people.[175] In other words, what is not regulated is generally legal. By contrast, the legal tradition in the former Soviet Union, and the Russian Empire before it, operated under authoritarian and totalitarian forms of government.[176] The presumption of legality was reversed; what was not permitted by the state was generally illegal. In political terms, communist ideology did not tolerate

168. KONST. RF, art. 29 (1993).

169. *Id.* art. 30.

170. *Id.* art. 32.

171. *Id.* art. 55.

172. *Id.* art. 56.

173. Melissa Dawson, *Free Speech and the Mass Media in Russia: Lessons From the December 1993 Election and Constitutional Referendum,* 13 CARDOZO ARTS & ENT. L.J. 881, 881-82 (1995).

174. *Id.* ("This balancing process will be heavily influenced by the particular vision of democracy held by those entrusted with interpreting the constitution.").

175. U.S. CONST. art. 1, § 8; U.S. CONST. amend. X ("[P]owers not delegated to the United States by the Constitution . . . are reserved to the States respectively, or to the people.").

176. Molly Warner Lien, *Red Star Trek: Seeking a Role for Constitutional Law in Soviet Disunion,* 30 STAN. J. INT'L L. 41, 43 (1994).

speech in opposition to state goals.[177] In economic terms, activity not under the state's control of centralized planning and ownership became part of the illegal underground economy.[178] Following the Soviet tradition, political and economic rights under the Yeltsin Constitution remain "affirmative rights," granted by the state and subject to diminution.[179]

Comparisons between balanced and dominant visions of the U.S. First Amendment and the development of rights found in the Yeltsin Constitution have not escaped scholarly notice. From one perspective, the attempt to establish free access to government has resulted in "considerable uncertainty, inconsistency, and fluctuation in the scope and definition of constitutional rights of expression as well as information."[180] From another perspective, developing defamation law, which hinges on Article 29's prohibition of socially disruptive propaganda, exemplifies a Russian proclivity for government restrictions.[181] Using executive decrees, Yeltsin set an early precedent for Article 29 by censoring the press during a state of emergency in October 1993.[182] More recently, Yeltsin's campaign advisors aggressively employed state-regulated media to push his re-election in 1996.[183]

Faced with mafiya violence and ubiquitous graft, conservatives have harkened to the anticorruption drives of the late Soviet period.[184] Emphasizing the need for punitive measures, Prosecutor General Yuri Skuratov has argued that for state bureaucrats "that which is not ex-

177. *Id.*

178. McGrory, *supra* note 94, at 67.

179. Ruder, *supra* note 107, at 1429-30.

180. Foster, *supra* note 50, at 272.

181. Peter Krug, *Civil Defamation Law and the Press in Russia: Private and Public Interests the Civil Code, and the Constitution,* 14 CARDOZO ARTS & ENT. L.J. 297, 331-332 (1996).

182. Dawson, supra note 173, at 883 n.9.

183. Michael Kramer, *The Secret Story of How Four U.S. Advisors Used Polls, Focus Groups, Negative Ads and All the Other Techniques of American Campaigning to Help Boris Yeltsin Win,* TIME, July 15, 1996, at 32.

184. *See supra* text accompanying notes 89-93; Yeltsin's nationalist rival, Alexander Lebed, has advocated increased incarceration to reduce organized crime. Alexander Lebed, *What Ails Russia,* WALL ST. J., Jan. 27, 1997, at A14; The 1996 campaign of communist presidential candidate Gennedy Zyganov benefited from the perception that economic reformers were incapable of reducing mafia violence. Bill Powell and Betsy McKay, *Russian Roulette,* NEWSWEEK, June 12, 1996, at 29.

pressly permitted should be forbidden."[185] In the anticorruption laws enacted following privatization, the conservative view that penalties on illicit contact with public officials should be incorporated in the Criminal Code has generally prevailed over concerns of restricting free speech.[186]

Until recently, the Duma resisted measures to regulate the interaction of public officials and business interests. During the first session of the Duma, prominent businessmen and their allies in the legislature created an Interdepartmental Commission of the Security Council of the Russian Federation, Combating Crime and Corruption, which operated under Minister of Justice Valentin Kovalev.[187] As the pace of privatization slowed, Duma conservatives formed a temporary Committee for the Correction of Privatization to investigate unpunished abuses in the transfer of property to the private sector.[188] By 1997, Yeltsin and Duma conservatives seemed to reach consensus that new punitive measures were necessary to combat corruption in the business-government relationship.[189]

D. Exporting the U.S. Model

Experts from the United States have helped Russian policymakers cope with political and economic change through aspirational models, direct involvement, and advice from afar. These approaches to providing

185. Leonid Nikitinsky, *Prosecutor General: Political Will Needed for War on Corruption,* MOSCOW TIMES, Dec. 19, 1996, *available in* LEXIS, Nexis Library, News & Analysis File.

186. Possehl, *supra* note 9, at 73; Ilya Smirnov, *Opposition to Anti-Corruption Law Very Strong,* RUSSIAN PRESS DIGEST, May 21, 1994, *available in* 1994 WL 9142999.

187. *Id.* Kovalev, a former Duma deputy educated in both American and Russian law, eventually resigned when the Russian press published photographs of him in a sauna frequented by the mafiya. Richard Beeston, *Russian Minister of Justice Resigns Over Sex Scandal,* TIMES (LONDON), JUNE 23, 1997, at 14, *available in* 1997 WL 9210583; *Kovalev, Valentin Alexeyevich,* Russia.Net Biographies Database (visited Mar. 5, 1997) <http://www.russia.net/cgi-bin>.

188. Steve Liesman, *Looking Back: Some Russian Officials Are Moving to Reverse Business Privatization,* WALL ST. J., March 20, 1996, at A1.

189. *Yeltsin Steps Up Fight to Weed Out Corruption,* WALL ST. J. EUR., April 11, 1997, *available in* 1997 WL WSJE 3809472. Yeltsin stated: "I will fight this to the end. People will be afraid to misappropriate public funds and take bribes." *Id.* Gennady Seleznyov, the communist Speaker of the Duma, promised his full cooperation: "I have long waited for a political statement by the president and have said on more than one occasion that his political will is needed for effectively fighting corruption." *Id.*

technical assistance converged in the effort export the U.S. model for regulating lobbying.

Whether the FCPA and other international anticorruption efforts influenced Russian policymakers is debatable.[190] Reaching across national borders to promote business ethics through the FCPA resulted in enforcement, interpretation, and implementation difficulties.[191] An unhappy interconnection of criminal, political, and business activity endured.[192] While the Duma adopted criminal prohibitions on bribery, legitimate lobbying remained largely unregulated.[193] In short, the aspirational model of the FCPA has not effectively exported the U.S. model for regulating lobbying.

Direct involvement by U.S. experts in Russian economic and political policymaking has had mixed success. In economic matters, observers familiar with both the civil law tradition in socialist societies and the common law development of corporate governance in the United States have questioned whether applying Western standards to Russia's unique experiment with privatization did more harm than good.[194] In political matters, the secret hiring of prominent U.S. consultants to advise on polling, focus groups, negative ads and other campaigning practices advantaged an institutionally powerful incumbent.[195] In criminal matters, the U.S. Federal Bureau of Investigation has advised Russian prosecutors on techniques for combating mafiya violence.[196] One observer darkly warned against exporting American methods within a governmental structure that could allow a president to exercise near-dictatorial power, especially if unchecked by a like-minded, freely elected legislature.[197] Another pessimist intoned: "[p]oliticians and populace alike now blame much of Russia's economic, political, and social ills on misguided, mechanical transplantation of foreign models."[198]

190. *See supra* Part I.D.
191. *See supra* notes 69-78 and accompanying text.
192. *See supra* note 155.
193. *See supra* Part II.B.
194. Baev, *supra* note 3, at 248.
195. Kramer, *supra* note 183, at 28.
196. Asnis, *supra* note 3, at 313-314.
197. *Russian Federation Politics, supra* note 127.
198. Foster, *supra* note 50, at 274

The experience of Harvard's Institute for International Development ("HIID") exemplifies the danger of corruption undermining the advisory process itself.[199] Funded by the U.S. Agency for International Development ("USAID"), HIID's Russian Privatization Center drafted legislation governing private enterprises and worked closely with Anatoly Chubias on implementation of industrial privatization.[200] USAID suspended funding in early 1997 when investigators found that HIID directors had invested in the Russian capital markets they helped create.[201] The experience embittered Harvard advisors, advantaged opponents of Russian reform, and contributed to an anti-American sentiment in Russia.[202]

Like a lifeguard hailed by a swimmer struggling in unpredictable currents, U.S experts must approach the object of their aid with awareness that engagement may harm both parties. The dangers of direct involvement suggest that U.S. experts maintain a safe distance when engaging with Russian policymakers. However, simply advising from afar may fall short of saving the swimmer. For example, in 1993 the American Bar Association ("ABA") sponsored a five day meeting with a Russian delegation which included legislators and the Executive Secretary of the commission working on the Yeltsin Constitution.[203] Although workshops with leading U.S. academics and practitioners produced a spirited dialogue, one panelist concluded: "We all left the meeting thinking that our comments were relatively insignificant compared with the economic, law and order and political problems now facing Russia."[204]

The ABA's Central and Eastern European Law Initiative ("CEELI"), which co-sponsored the 1993 meeting, has incorporated various approaches to providing technical advice to Russian policymak-

199. David Filipov and David Marcus, *Probe of Russian Work Shocks Harvard Advisor,* BOSTON GLOBE, May 25, 1997 at A1.

200. *Id.*

201. *Id.*

202. *Id.*

203. Central and East European Law Initiative: Technical Legal Assistance Workshops, Legal Training, Draft Law Assessments, Concept Papers, Resident Liaisons and Legal Specialists, Sister Law School Program, Other Projects (Jan. 22, 1993) (unpublished brochure) (on file with author).

204. Memorandum from Vigo G. Nielsen (Feb. 17, 1993) (on file with author). It was obvious to this participant that "most of the considerations relate[d] to politics within present day Russia and not the wording of individual provisions or any constitutional lessons learned by Americans in the 1770's or later." *Id.*

ers. Concept papers, which discuss major issues legislation must address, provide aspirational guidance on broad topics such as election law.[205] Liaisons reside in host countries to forge relationships in the legal community and receive requests for technical assistance from policymakers.[206] After a request, CEELI's central office in Washington, D.C. recruits scholars, judges, practitioners and other experts to comment on draft legislation.[207] CEELI then summarizes these recommendations in Legal Assessments, which it sends to the liaison for presentation to the requesting public official.[208] CEELI guards against the dangers of direct involvement:

> The assessments are not designed to redraft the laws in accordance with the United States' laws or dictate the particular direction the law should take; rather, the assessments are intended to raise issues the drafters may not have considered and provide a spectrum of options from which the drafters of the laws can select the approach most appropriate for their countries' needs.[209]

CEELI, which began providing legal assessments to Russia in 1992, receives eighty percent of its funding from USAID and requires participants to follow a code of ethics to avoid conflicts of interests and the appearance of conflicts of interest.[210]

During the summer of 1995, the Duma's Committee on Public and Religious Organizations considered a federal law "On Regulating Lobbying Activities in Federal Governing Bodies."[211] This section has examined the business-government relationship which this legislation attempted to regulate, alternatives available under the Yeltsin Constitution, and approaches of technical assistance from the United States. The fail-

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205. *Legal Assessments and Concept Papers* (visited Aug. 5, 1997) <http://www.abanet.org/ceeli/assessments.html>.

206. Telephone Interview with Geoffrey K. Bentz, Director, Legal Assessments Program, CEELI (July 17, 1997).

207. *Id.*

208. *Id.*

209. *Legal Assessments and Concept Papers*, *supra* note 205.

210. AMERICAN BAR ASSOCIATION CENTRAL AND EAST EUROPEAN LAW INITIATIVE ANNUAL REPORT 3, 39 (1996). As of 1996, CEELI had performed pro bono work valued at more than $55 million. *Id.* at 6.

211. On Regulating Lobbying Activities in Federal Governing Bodies (May 31, 1995) (on file with author) [hereinafter "Draft Legislation"].

ure of this legislation, despite assistance from U.S. experts, presents the question of whether the U.S. model for regulating lobbying could, or should, be exported to Russia.

III. The Attempt to Pass Lobbying Law Based on the U.S. Model in Russia

In the midst of political and economic change, the Duma created a legal infrastructure to accommodate the emerging business-government relationship.[212] By 1995, the Duma passed laws establishing chambers of commerce and industry, guaranteeing the right to public associations, and normalizing business activity through the Civil Code.[213] This section examines the attempt to fortify the legal infrastructure of the business-government relationship with a lobbying law based on the U.S. model.

Vladimir Lepekhin, Deputy Chairman of the Committee on Public and Religious Organizations, circulated draft legislation "On Regulating Lobbying Activities in Federal Governing Bodies" during the summer of 1995.[214] The committee solicited comments from various groups inside and outside of Russia.[215] Recommendations by U.S. experts illustrate the difficulties of exporting the U.S. model of lobbying regulation to the Russian Federation.[216] The legislation advanced modest goals, defined lobbyism, granted broad rights to lobbyists, demanded limited disclosure, imposed new restrictions, addressed foreign lobbying, and imposed civil fines.

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212. *See* Part II, B.

213. *See supra* notes 121-125 and accompanying text.

214. Draft Legislation, *supra* note 211; Russian Federation, CEELI UPDATE, Spring 1995, at 1.

215. From inside Russia, the law was reviewed by representatives of domestic organizations ranging from the Russian Academy of Sciences to the Moscow State Institute of Foreign Affairs. The Committee on Public and Religious Organizations also heard from leading U.S. businesses in Moscow, American-based law firms, and international associations, such as the American Chamber of Commerce in Russia.

216. The advice from U.S. experts discussed in this section comes principally from two sources: American Bar Association, Central and East European Law Initiative, Analysis of the Draft Law on the Regulation of Lobbying Activity for the Russian Federation (May 31, 1995) (on file with author) (hereinafter CEELI Assessment) and On Regulating Lobbying Activities in Federal Governing Bodies (June 31, 1995) (with suggested edits) (on file with author) [hereinafter Edited Draft Legislation].

The goals of the law were modest, accommodating the current reality of lobbying without curtailing its legitimate practice. Article 1 stated the goals of the Federal law as follows:

> (a) Assistance to the implementation of the constitutional rights of citizens of the Russian Federation to participate individually or thorough different organizations in managing state affairs by influencing the decision making process in governing bodies;
> (b) Providing for more openness and professionalism in legislative and other activities of federal state bodies;
> (c) The legalization and regulation of lobbying activities.[217]

Subdivision (a) reiterated the mandate of Articles 29, 30 and 32 of the Yeltsin Constitution, providing for free association and access to information as a means for directly influencing government action.[218] Subdivision (b) recognized that disclosure of lobbying would create professionalism in government and establish a civilized way of interacting with authorities.[219] By legalizing lobbying under subdivision (c), the Duma could regulate lobbyists just as it would later criminalize bribery by businesspeople, prohibit public officials from hindering lawful entrepreneurial activities, and mandate citizen access to information under the Criminal Code.[220] Like the Federal Regulation and Lobbying Act of 1946, then still regulating federal lobbying in the United States, the law envisioned a positive role for lobbyism.[221] Unlike the American model, the goals did not explicitly identify dangers addressed by the legislation, such as misleading or secretive lobbying by organized special interests.[222]

Article 3 of the draft legislation defined lobbying as the attempt to influence the development, adoption, or implementation of legislative acts and executive decisions.[223] Lobbyists would include authorized

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217. Draft Legislation, *supra* note 211, art. 1, § 1.1.

218. KONST. RF, art. 29, §§ 2, 4 (1993).

219. *See* text accompanying notes 131, 151.

220. *See* text accompanying note 137.

221. *See supra* note 19 and accompanying text.

222. *Id.* The draft law did, however, allow for criminal prosecution under defamation laws for threats, insults and propaganda against Duma deputies. *See* Draft Legislation, *supra* note 211, art. 10, § 3.

223. Draft Legislation, *supra* note 211, art. 3. 3.1. ("[T]he activities of legal and physical persons in relation to the federal governing bodies with the purpose of influ-

agents and staff members of public and private organizations.[224] Presentation of information to federal bodies, participation in public discussions, verbal and written contacts with public officials, expert analysis of government acts not requested by officials, and other forms of interaction would be regulated as legitimate lobbying activities.[225] U.S. experts advised an exception for grassroots lobbying and presidential lobbying.[226] However, the broad scope of the draft law may have suited to the complexities of the informal contacts characterizing the business-government relationship in post-Soviet Russia.[227]

Article 7 of the draft legislation assured lobbyist access to unclassified information from state bodies and public officials.[228] U.S. experts criticized Article 7 as unworkable:

> The language suggests actual participation in the discussions and meetings of committees during the drafting of a law. Lobbyists appear to be granted access even to private meetings, whether or not participants object. This is not acceptable because lobbyists are not elected officials and should not have such direct influence in the creation of legislation.[229]

While unacceptable by American standards, Russian legislators had become accustomed to presidential lobbyists,[230] public associations,[231]

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encing the development, adoption and implementation by the latter of legislative acts and administrative decisions on behalf and in the interest of their clients are understood as lobbying activities.").

224. Duma members and their staff could not act as lobbyists. *Id.* art. 5.1, (a), (b).

225. *Id.* art. 6.

226. The CEELI Assessment recommended that, as under American disclosure law, the draft law address only "direct lobbying." CEELI Assessment, *supra* note 216, at 4. "Creating laws limiting free speech would be a more appropriate manner to address grassroots lobbying, while an ethics law would better address relations between the branches of government." *Id.* at 4 n.10.

227. A law based on the narrower definition found in FRLA may have failed to significantly monitor special interest pressure. *See supra* note 40.

228. Draft Legislation, *supra* note 211, art. 7, § 1 ("Lobbyists have the right to obtain any unclassified information from the appropriate state bodies, as well as amendments and suggestions on the lobbying bill or other normative act."). *See id.* § 2 ("Lobbyists are guaranteed access to both the Russian Federation Federal Assembly, its committees and commissions, and to the Russian Federation executive bodies, and guaranteed the opportunity to meet with deputies and officials of the federal executive bodies.").

229. CEELI Assessment, *supra* note 216, at 5.

230. *See supra* note 114.

231. *See supra* note 123.

chambers of commerce and industry,[232] and foreign advisors[233] drafting legislation. Article 32 of the Yeltsin Constitution, and later Article 40 of the Criminal Code, appeared to guarantee citizen participation in the affairs of government.[234]

At the heart of the legislation, Articles 8 and 9 provided for public disclosure of lobbying activity.

- Article 8 detailed a system of registration and disclosure under the Ministry of Justice. The Ministry would develop registration documents, scrutinize the accuracy of required filing, analyze lobbying, and provide public access to disclosed information. Lobbyists would pay a fee and re-register each year;[235]
- Article 9 specified the content of disclosure forms. Lobbyists would be required to file semi-annual forms detailing who was lobbied, resources received, expenses incurred, and results achieved.[236]

Article 8 resembled the passive role of U.S. federal lobbying provisions.[237] The draft legislation was designed to expose lobbying practices, not fundamentally alter them. However, Article 9 would have required more disclosure than the Lobbying Disclosure Act of 1995 by scrutinizing "results achieved."[238]

U.S. experts recommended amending Article 8 to give the title of Registered Professional Lobbyists to those lobbyists who complied with the law, thus distinguishing them from those lobbying in violation of the act[239] and Article 9 to reduce reporting requirements to a "brief description" of clients and replacing specific accounting requirements with a listing of activities performed on behalf of clients.[240]

The amendments to Article 8 highlighted the challenge of separating business, criminal, and political activities. Accustomed to close ties with

232. *See supra* note 121.
233. *See supra* note 200.
234. *See* text accompanying notes 137, 170.
235. Draft Legislation, *supra* note 211, art. 8, § 1.
236. *Id.* at art. 9, § 1.
237. *See* Part I.B.
238. *Id.*
239. Edited Draft Legislation, *supra* note 216, art. 8, § 1.
240. *Id.* art. 9, § 1.

both public officials and the mafiya, business lobbyists would be forced to identify themselves as professional from outside the government. The recommended amendments to Article 9 reflected the reluctance in U.S. jurisprudence to demand reporting requirements so onerous as to impermissibly burden legitimate lobbying activity.[241] In the words of Justice Jackson, the disclosure provisions of the draft law afforded the "greatest freedom of access" to government officials but required reporting of results achieved as a price for that access.[242]

The Russian lobbying law would have achieved several restrictions on federal lobbying. Article 5 would have disallowed elected officials and their staffs from lobbying for one year after expiration of their authority.[243] Article 10 would have prohibited, and allowed prosecution for, propaganda campaigns which discredit officials, bribery, blackmail, threats and insults, and knowing distribution of false information. Sanctions would apply to criminal activity directed toward officials, relatives and other persons close to officials.[244] Article 5 would have imported the "revolving door" concept of U.S. ethics rules.[245] Article 10 represented the most significant departure from the U.S. model by limiting the free speech capabilities of lobbyists.

U.S. experts recommended amending Article 5 to bar contributions from lobbyists to the political campaigns of public officials[246] and Article 10 to eliminate sanctions for propaganda, for non-physical threats and for any crime involving "persons close to" officials.[247]

The amendment to Article 5 would have imported a campaign finance reform favored by critics of the corrupting influence of money in politics.[248] In contrast, U.S. advisors were uncomfortable with the latitude given to prosecutors under the law. Article 10 adopted the language of Article 29 of the Yeltsin Constitution,[249] reflected the likely course of

241. *See supra* note 60. Even under California law, the requirement would not likely be found so onerous as to constitute an impermissible burden on legitimate lobbying. *Id.*

242. *See* text accompanying note 57.

243. Draft Legislation, *supra* note 211, art. 5.

244. *Id.* art. 5-9.

245. *See* text accompanying note 39.

246. Edited Draft Legislation, *supra* note 216, art. 5.

247. *Id.* at art. 10.

248. *See supra* note 50.

249. KONST. RF, art. 29, § 2 (1993).

defamation law,[250] accommodated the conservative view emphasizing prosecution,[251] and addressed the threat of mafiya violence by including a Duma deputy's inner circle in the purview of prosecutorial power.

The enforcement provisions in Article 10 recognized the distinction between offenses punishable under the Criminal Code and violation of disclosure responsibilities.[252] The Ministry of Justice could suspend lobbying licenses and fine lobbyists supplying incomplete or false data to the ministry.[253] However, given the U.S. experience with spotty registration,[254] and the profits to be made by illicit lobbying in Russia,[255] even the sizable civil fine my not have been sufficient to ensure compliance.[256]

Finally, the proposed Russian law permitted lobbying by foreign organizations but not by citizens of foreign countries.[257] By freely permitting lobbying by agents of foreign business interests, the legislation departed from U.S. policy under the Foreign Agents Registration Act of 1938.[258] The departure is surprising in light of the popular distrust of the transplantation of foreign models but practical in light of the role U.S. experts have played in drafting Russian laws.

Ultimately, the Committee on Public and Religious Organizations rejected most U.S. recommendations and the legislation failed to pass the Duma. This Note suggests several explanations for that failure. First, entrenched interests may have seen the legislation as a threat to presidential lobbying and the undisciplined lobbying among business, criminal, and political interests. The business community, through its allies in the Duma, may have been hesitant about exposing current practices. The unholy alliance of organized crime and corrupt officials may have

250. Krug, *supra* note 181, at 297.

251. *See* text accompanying notes 185-186.

252. Draft Legislation, *supra* note 211, art. 10.

253. *Id.*

254. *See supra* notes 11, 40.

255. *See supra* note 78.

256. Alternatively, the draft law could have, like the Lobbying Disclosure Act of 1995, included criminal liability for perjury. *See supra* note 45.

257. Draft Legislation, *supra* note 211, art. 3, § 4.

258. *See* text accompanying note 40. Critics of FARA have questioned the rationale of limiting foreign contributions in an era of multilateral business activity. *See* Jeffrey K. Powell, *Prohibitions on Campaign Contributions from Foreign Sources: Questioning Their Justification in a Global Interdependent Economy*, 17 U. PA. J. INT'L ECON. L. 957 (1996); Troy, *supra* note 5, at 31.

worked to thwart disclosure. Second, the tumult and uncertainty of the approaching presidential election may have overshadowed and bogged down progress on regulating lobbying. Communists and nationalists opposing Yeltsin counted on corruption as a potent campaign issue. Third, the conservative majority in the Duma may have used its political muscle to reject the disclosure model in favor of increased prosecution under the criminal code. Like Congress, the Duma may have been incapable of striking a balance between the right to petition the government and the need to combat corruption.

There exists another explanation for the failure to export the U.S. model of lobbying regulation. Similar to the attempt to enact corporate governance codes, import election practices, and adopt techniques to address organized crime, legislators Russian may have perceived unintended consequences of transplanting the U.S. model.[259] The approach of sending expert advice as a foreign aid avoided the dangers of dictating an American result or falling prey to corruption in the advisory process itself but failed to produce workable legislation. The method of dialogue between U.S. legal advisors and Duma deputies was insufficient. One U.S. advisor later reflected that like the 1993 ABA conference in Washington, D.C. on the proposed Yeltsin Constitution,[260] "neither side understood what was being said by the other side."[261]

IV. Courses for the Future

This Note argues that the effort to export U.S. anticorruption laws as a form of foreign aid has become insufficient to help Russians cope with the lobbying dimension of the evolving business-government relationship in that country. In early 1997, the Clinton Administration requested $535 million in new funds for a Partnership for Freedom to assist Russia and other Central European countries.[262] Secretary of State Madeline Albright explained:

259. *See* text accompanying notes 194-198

260. *See* text accompanying notes 203-204.

261. Ann Mizel, *Lessons in Lobbying for a Fledgling Democracy,* ARK, July 5, 1995, at 2.

262. *Prepared Statement of Secretary Albright Before the House Appropriations Committee, Foreign Relations Subcommittee,* 105th Cong., 1st Sess. (Feb. 12, 1997), *available in* LEXIS, News Library, Federal News Service File.

> This reflects an evolution in our approach to the region. For years, we have been providing technical advice on how to achieve political and economic reform. Our focus will now be on cementing the irreversible nature of those reforms. The initiative will concentrate on activities to promote business, trade and investment and that would strengthen democracy and more fully establish the rule of law.[263]

It is appropriate, therefore, to end this analysis with consideration of future courses of action for regulating lobbying activity in Russia. These options shed light on the appropriate nature of the evolution in foreign aid policy.

TRY AGAIN. This option reflects the possibility that the attempt to regulate lobbying activity in Russia was correct in concept but flawed in implementation. As political waters calm, and undisciplined lobbying becomes increasingly intolerable, legislators can better focus on corruption in their ranks. With passage of the Lobbying Disclosure Act of 1995, U.S. experts may have new perspectives to share. This optimistic view holds that U.S. law can continue to serve as an aspirational model for the business-government relationship in Russia. As Artyom Tarasov, an early supporter of anticorruption laws commented, "I am not that naive to believe that a legislative act will solve all our problems, but we have to begin somewhere."[264]

STEP BACK. This option rests on the assumption that the approach of exporting the U.S. model has outlived its usefulness in shaping economic and political development in the Russian Federation. Russia's mafiya presence, legal tradition, and political priorities require that Duma deputies create unique solutions to combat corruption in the business-government relationship. Having provided valuable technical assistance, U.S. experts must disengage, observe, and provide advice from a healthy distance. Otherwise, despite good intentions, the United States might do more harm than good. In essence, this view would let Russians deal with the problem of lobbying as the Russians will.

INTEGRATED APPROACH. This option holds that the attempt to pass lobbying reform in 1995 was flawed in both concept and implementation. It recognizes, in the words of Secretary Albright, that the U.S. approach for advising Russian policymakers must evolve in order to cement demo-

263. *Id.*

264. Smirnov, *supra* note 186.

cratic reform and promote business growth. It would broaden, instead of continuing or curtailing, the dialogue over the business-government relationship by including additional voices in the conversation. Foreign aid could support conferences involving Russian and American business associations, Duma and Congressional representatives, prosecutors, political consultants, and academics. Rather than relying on U.S. experts as teachers, this ambitious approach recognizes that all parties, both American and Russian, could learn from a candid consideration of how to best regulate lobbying.

Lobbyists pervade the business-government relationship. International pressure and the economic price of corruption make regulation of Russia's undisciplined lobbying a necessity. Duma legislation circulated in 1995 — the same year Congress passed new lobbying disclosure requirements — failed to export the U.S. model of business-government ethics to Russia. In 1997, leaders in both countries vowed renewed efforts to combat corruption. Whichever course for the future is pursued, observation of the continuing Russian effort to regulate lobbying will lead to a better understanding of the virtues and drawbacks of this inevitable business practice in both the United States and Russia.